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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/689,515	06/01/2004	Ravi Shrivastava	S112.12-0002	8626
27367	7590	11/06/2006	EXAMINER	
WESTMAN CHAMPLIN & KELLY, P.A.			ARNOLD, ERNST V	
SUITE 1400			ART UNIT	
900 SECOND AVENUE SOUTH			PAPER NUMBER	
MINNEAPOLIS, MN 55402-3319			1616	

DATE MAILED: 11/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/689,515

Applicant(s)

SHRIVASTAVA ET AL.

Examiner

Ernst V. Arnold

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 02 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,4,7,10 and 13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,4,7,10 and 13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

Claims 2, 3, 5, 6, 8, 9, 11, 12, 14 and 15 have been cancelled. Claims 1, 4, 7, 10 and 13 are pending.

Acknowledgment is made of Applicant's remarks filed on 8/02/06. Applicant has narrowed the scope of independent claim 1 by amending the claim to be drawn to a composition "consisting of". Applicant's amendment has necessitated further searching and a new ground of rejection. The Examiner notes the submission of three pieces of non-patent literature but no foreign patent literature filed on 7/13/06. This Action is final.

#### **Withdrawn rejections:**

1. Claims 1, 4, 7 and 13 were rejected under 35 U.S.C. 102(b) as being anticipated by Howard (US 4,237,118). Applicant asserted that the composition of Howard is a non-specific dietary supplement and not a specific synergetic composition of vitamins, minerals and trace-elements. Applicant amended claim 1 to read on a composition "consisting of" these ingredients. Since the composition of Howard contains other active ingredients, the Examiner is withdrawing the rejection.

2. Claims 1, 4 and 7 were rejected under 35 U.S.C. 102(b) as being anticipated by Howard (US 4,009,265). Applicant asserted that the composition of Howard is a non-specific composition and not a specific synergetic composition of vitamins, minerals and trace-elements. Applicant amended claim 1 to read on a composition "consisting of" these ingredients. Since the composition of Howard contains other active ingredients, the Examiner is withdrawing the rejection.

3. Claims 1-3 and 13-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Andon et al. (US 5,571,441). Applicant asserted that the composition of Andon et al. is a non-specific composition and not a specific synergetic composition of vitamins, minerals and trace-elements. Applicant amended claim 1 to read on a composition "consisting of" these ingredients. Since the composition of Andon et al. contains other active ingredients, the Examiner is withdrawing the rejection.

4. Claims 1, 4, 7, 10 and 13 were rejected under 35 U.S.C. 102(b) as being anticipated by Saiki et al. (GB 2038157). Applicant asserted that the compositions of Saiki et al. also contain proteins, caloric sources and foods and not the instantly claimed composition. The Examiner agrees and withdraws the rejection.

5. Claims 1, 4 and 10 were rejected under 35 U.S.C. 103(a) as being unpatentable over Howard (US 4,237,118) in view of Votruba et al. (Nutrition 2000, 16, 179-188). Since Applicant amended instant claim 1 to remove the ground of rejection over Howard as explained above, then the Examiner withdraws this rejection as well.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4, 7 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Nesbitt (US 5,569,477).

Nesbitt teaches a chewing gum comprising a first and second active material selected from the group consisting of a nutritionally effective amount of vitamins and minerals (Claims 1 and 10). The first active material is selected from the group consisting of vitamin E and riboflavin, for example and the second active material is selected from the group consisting of vitamin A and folic acid, for example (Claims 6-9). The chewing gum further comprises a nutritionally effective amount of at least one additional mineral selected from the group consisting of magnesium, copper, zinc and selenium, for example (Claims 16 and 17). Nesbitt discloses that the gumballs possess good consistency, flavor and chewability and release 90 to 95% of the active materials into the oral cavity and digestive system during the first five to ten minutes of chewing (Column 10, lines 26-33). The Examiner interprets this to read on a method of use of the chewing gum. It is the Examiner's position that the method of reducing intracellular lipids and toxic wastes that have accumulated in the body by orally administering the composition is inherent in the method of Nesbitt. It is the Examiner's position that the nutritionally effective amount of ingredients disclosed by Nesbitt would inherently be effective for the reduction of intracellular lipids and toxic wastes which have accumulated in the body in the absence of evidence to the contrary.

With respect to the art rejection above, it is noted that the reference does not teach that the composition can be used in the manner instantly claimed (in an amount effective for reduction of intracellular lipids and toxic wastes which have accumulated in

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a human body), however, the intended use of the claimed composition does not patentably distinguish the composition, per se, since such undisclosed use is inherent in the reference composition. In order to be limiting, the intended use must create a structural difference between the claimed composition and the prior art composition. In the instant case, the intended use does not create a structural difference, thus the intended use is not limiting.

In anticipation of an argument from Applicant that the composition of Nesbitt contains a gum base (claim 1), the Examiner notes that Applicant's own invention contains various excipients (See Example 1 of the instant specification).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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Claims 4 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nesbitt (US 5,569,477) in view of Votruba et al. (Nutrition 2000, 16, 179-188).

Applicant claims a method for reducing intracellular lipids and toxic wastes that have accumulated in the human body.

**Determination of the scope and content of the prior art**

**(MPEP 2141.01)**

The reference of Nesbitt is discussed in detail above and that discussion is hereby incorporated by reference.

Votruba et al. provide a general teaching that exercise is strongly associated with improved weight maintenance (Page 187, left column, first paragraph).

**Ascertainment of the difference between the prior art and the claims**

**(MPEP 2141.02)**

Nesbitt does not expressly teach the method further comprising physical exercise or muscular electrostimulation with the oral administration.

**Finding of prima facie obviousness**

**Rational and Motivation (MPEP 2142-2143)**

It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to include exercise, as suggested by Votruba et al. with the method of chewing gum with active components of Nesbitt for the purpose of losing

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weight and keeping it off and produce the instant invention. In addition, the use of laxatives, certain popular diets (e.g., Atkin's or South beach) and other forms of exercise, such as muscular electrostimulation, are known to one of ordinary skill in the art.

One of ordinary skill in the art would have been motivated to do this because it is desirable to keep the weight off and not regain the weight lost by diet.

A reference is good not only for what it teaches by direct anticipation but also for what one of ordinary skill in the art might reasonably infer from the teachings. (*In re Opprecht* 12 USPQ 2d 1235, 1236 (Fed Cir. 1989); *In re Bode* 193 USPQ 12 (CCPA) 1976).

In light of the forgoing discussion, the Examiner concludes that the subject matter defined by the instant claims would have been obvious within the meaning of 35 USC 103(a).

From the teachings of the references, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole was *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in the absence of evidence to the contrary.



***Conclusion***

No claims are allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ernst V. Arnold whose telephone number is 571-272-8509. The examiner can normally be reached on M-F (6:15 am-3:45 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

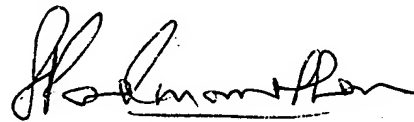
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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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